IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

Writ Petition No.4467 of 2005

Pandit D Aher ..Petitioner
vs
State of Mah and ors.. respondents

Mr P.M.Pradhan for Petitioners
MR.V.P.Malvankar AGP for State

CORAM;A.P.SHAH & D.Y.CHANDRACHUD JJ.
Dated 22.7.2005

l. Heard Mr Pradhan, learned counsel appearing for the petitioner and the learned AGP for respondents. Perused the order of the Maharashtra Administrative Tribunal (MAT). The petitioner who was working as Block Development Officer was charge sheeted for serious acts of misconduct. An inquiry was conducted into the said charges levelled against him by the Enquiry Officer who submitted his report holding that the petitioner was guilty of the charges. Thereafter two separate show cause notices were issued to the petitioner . By the first show cause notice dated 2l.l2.l998 punishment of recovery of Rs.2,85,658 together with withholding of pension for a period of 5 years was proposed. By the second show cause notice dated 20.7.2000 it was proposed to withhold entire

pension and gratuity of the petitioner. The petitioner filed his reply to the show cause notices. Ultimately by order dated l7.5.2000 the disciplinary authority imposed punishment of withholding of entire pension and gratuity. The appeal carried before the Appellate Authority was dismissed. Thereafter the petitioner approached the tribunal by filing Original Application No.559 of 2004. The O A was dismissed by the tribunal vide order dated l5.2.2005.

2. Mr.Pradhan mainly raised two submissions before us. First, he submitted that the copy of the preliminary inquiry report was not furnished to the petitioner and that it had affected the defence of the petitioner . Secondly he submitted that the disciplinary authority has not followed the procedure laid down by rule 27 of the Maharashtra Civil Services Rules, for imposing punishment of forfeiting entire pension and gratuity.

3. We do not find any substance in either of the submissions of Mr.Pradhan. As far as the first submission is concerned it is seen from the record that the preliminary inquiry report was neither relied upon nor referred to in the report of the

Enquiry Officer. Therefore the question of causing any prejudice to the petitioner by not supplying the copy of preliminary inquiry report does not arise. Further it is seen from the record that in fact a copy of the report was supplied to the petitioner and he had cross examined witnesses on the basis of the said report. In the circumstances it is not possible to accept the submission of the Mr Pradhan that the defence of the petitioner was prejudiced on account of non supply of preliminary inquiry report.

4. The second submission is that the procedure laid down by rule 27 was not followed by the department. In support of this submission Mr. Pradhan has placed reliance on the judgment of the learned single Judge of this court (Khandeparkar J.) in S.A.R.D.S.P Mandal vs Mujgonda, 2000(3) Mah L J 602. In that case the learned single Judge has held that the principles of natural justice need to be complied with in order to proceed under rule 27 of the said Rules to the extent that opportunity of hearing be afforded to the employee before order under rule 27(l) is passed. In the present case show cause notices under rule 27 were served on the petitioner and he filed his reply to the same and

therefore the grievance of the petitioner that there was no compliance with the principles of natural justice cannot be accepted. Mr.Pradhan also contended that the impugned order does not specifically mention that the petitioner was guilty of grave misconduct or negligence and therefore the order in question is illegal. He placed reliance on the decision in D.V.Kapur vs Union of India, AIR l990 SC l923. It is not disputed that the allegation against the petitioner are of grave nature and government has sustained loss to the tune of Rs.2,85,658. Considering the nature of the charges levelled against the petitioner we are inclined to hold that mere absence of words "grave misconduct" or "negligence" in the order passed by the disciplinary authority would not amount to non compliance of the provisions of rule 27 . In our opinion no interference is called for with the impugned order of the tribunal. Petition is dismissed.